

Notice of Allowability	Application No.	Applicant(s)	
	09/884,050	MINTZ ET AL.	
	Examiner	Art Unit	
	Dong Jiang	1646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed on 10/31/2003.
2. ☒ The allowed claim(s) is/are 1, 4, 5, 10-12, 18 and 19 to issue as 1-3, 6-8, 4 and 5.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No. <u>13</u> | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

DETAILED OFFICE ACTION

Applicant's amendment filed on 31 October 2003 is acknowledged and entered. Following the amendment, claims 2, 3, 31 and 32 are canceled, and claim 1 is amended. Currently, claims 1, 4-13 and 17-30 are pending.

The declaration filed on 31 October 2003 has not been considered because the declaration is not signed.

Rejoinder

Claims 10-12 (Group III invention) are directed to a method of using the nucleic acid of Invention I. Currently, as the claims of Invention I are allowable, claims 10-12, previously withdrawn from consideration as a result of a restriction requirement, is now subject to being rejoined, *In re Brouwer*, and *In re Ochiai*, and the restriction requirement between Groups I and III Inventions made in Paper No. 9 is hereby withdrawn.

Currently, claims 1, 4, 5, 10-12, 18 and 19 are under consideration.

Examiner's Amendment

An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on 25 November 2003, Mark Nuell requested an extension of time for one MONTH(S) and authorized the Director to charge Deposit Account No. 02-2448 the required fee of \$110 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Claims 6-9, 13, 17, and 20-30 have been cancelled.

In claim 10, the content has been replaced by the following:

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-- 10. A method for detecting a Vascular Endothelial Growth Factor Variant nucleic acid sequence in a biological sample, comprising the steps of:

- (i) contacting a probe nucleic acid consisting of a nucleotide sequence of SEQ ID NO:1, or a sequence complementary thereto, with a biological sample under conditions such that the probe nucleic acid will hybridize to complementary nucleic acids if present in the sample to form a hybridization complex; and
- (ii) detecting said hybridization complex. --

Examiner's Statement of Reasons for Allowance

The following is an examiner's statement of reasons for allowance: claims 1, 4, 5, 10-12, 18 and 19 of the present invention are directed to an isolated nucleic acid molecule consisting of a polynucleotide of SEQ ID NO:1 (426 nucleotides), complementary thereof, and a polynucleotide encoding SEQ ID NO:2, and a method of using the nucleic acid. Said nucleic acid encodes a VEGF splice variant consisting of SEQ ID NO:2 (141 amino acids). Schreiner et al. (US 6,352,975 B1) discloses a nucleic acid molecule, SEQ ID NO:6, which is 444 nucleotides in length, comprises nucleotides 1-424 of SEQ ID NO:1 of the instant case with 99.8% sequence similarity, and encodes a polypeptide of a human VEGF splice variant, SEQ ID NO:1 (147 amino acids). Schreiner's SEQ ID NO:1 comprises amino acid sequence of SEQ ID NO:2 of the instant case with 100% sequence identity. However, the prior art search results do not teach or suggest a nucleic acid molecule *consisting of* a nucleotide sequence of SEQ ID NO:1, nor a nucleic acid molecule *consisting of* a nucleotide sequence encoding a polypeptide of SEQ ID NO:2.

Conclusion:

Claims 1, 4, 5, 10-12, 18 and 19 are allowed.

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Advisory Information

Any inquiry concerning this communication should be directed to Dong Jiang whose telephone number is 703-305-1345. The examiner can normally be reached on Monday - Friday from 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564. The fax phone number for the organization where this application or proceeding is assigned is 703-308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

A handwritten signature in black ink, reading "Lorraine Spector". The signature is written in a cursive style with a large, looping initial "L".

**LORRAINE SPECTOR
PRIMARY EXAMINER**

Dong Jiang, Ph.D.
Patent Examiner
AU1646
11/25/03